

complaint

Miss A says Lloyds Bank PLC ('Lloyds') mis-sold her a payment protection insurance ('PPI') policy. She says that this caused her to default on her credit card which has affected her credit file. She's also complained about the amount of money Lloyds has offered her in compensation.

background

This complaint is about a credit card that Miss A took out in 2003. She took out PPI at the same time as taking out the credit card. Miss A says Lloyds mis-sold her the PPI. Lloyds initially disputed that it sold her PPI, but eventually agreed it had. Lloyds offered Miss A £2,026.34 for mis-selling her PPI.

The credit card still has an outstanding debt. And Miss A is complaining about the way Lloyds has pursued this debt. In 2011 Miss A received a letter from a debt collection agency ('DCA') asking her to pay Lloyds £1,937.01. Miss A wrote to the DCA to ask for evidence of this, because she hadn't heard from Lloyds since 2004. Lloyds responded and explained that it was an outstanding debt from the credit card which she had defaulted on. She's also not happy that this has affected her credit file.

I issued a provisional decision in February 2016 upholding this complaint. I've attached a copy of my provisional decision to this decision.

Miss A accepted my provisional decision. Lloyds responded saying that it would pay compensation in line with my provisional decision. But it said that it couldn't find any record of the default on Miss A's credit file. So it thinks that, given the default was more than six years ago, it's already gone off her credit file.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As neither party has given me anything to think about, I see no reason to reach a different conclusion. So I uphold this complaint for the reasons set out in my provisional decision.

If, as Lloyds has suggested, the default isn't on Miss A's her credit file anymore, then Lloyds doesn't need to update it. But, for the avoidance of doubt, if Miss A can show it's still on her record then she should refer this to Lloyds and it should update her record as I've said before.

what Lloyds needs to do to put things right

If it hasn't already done so, Lloyds should do the following:

1. The way that Lloyds has calculated the refund of PPI is fair, subject to any update of the 8% simple interest to the final settlement date. It can use this money to pay off the outstanding balance. But it should pay any money left over directly to Miss A;
2. Lloyds should update Miss A's credit file to say that the default was £897.71 rather than £1,937.01, if the default is still on her credit file;

3. It should pay Miss A £500 compensation for the trouble and upset she's suffered in this matter; and
4. Refund half of the late fees it charged Miss A between December 2008 and December 2010 and any interest charged on those fees.

my final decision

For the reasons I've explained, I uphold Miss A's complaint. Lloyds Bank PLC should pay Miss A compensation in line with the instructions set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 22 April 2016.

Guy Mitchell
ombudsman

Copy of my provisional decision

complaint

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background

This complaint is about a credit card that Miss A took out in 2003. She took out PPI at the same time as taking out the credit card. Miss A says Lloyds mis-sold her the PPI. Lloyds initially disputed that it sold her PPI, but eventually agreed it had. Lloyds offered Miss A £2,026.34 for mis-selling PPI.

The credit card has an outstanding debt. And Miss A is complaining about the way Lloyds has pursued this debt. In 2011 Miss A received a letter from a debt collection agency ('DCA') asking her to pay Lloyds £1,937.01. Miss A wrote to the DCA to ask for evidence of this, because she hadn't heard from Lloyds since 2004. Lloyds explained that it was an outstanding debt from the credit card which she had defaulted on. She's also not happy that this has affected her credit file.

I issued a provisional decision in October 2015. I partially upheld this complaint.

Lloyds had accepted that it had mis-sold the PPI. So I didn't look at how the PPI was sold. I looked at the way Lloyds has calculated Miss A's offer. And I thought it looked like Lloyds had calculated the refund in line with our guidelines. So I was satisfied that its offer for mis-selling the PPI was fair.

But I thought that the way that Lloyds has handled the matter had caused her some trouble and upset.

Miss A's initial attempts to see proof of the debt

When Miss A first heard from the DCA about the debt, she asked the DCA for evidence of it. She was told to pay £10 for the information, which she did. The DCA sent this money to Lloyds. But, as Lloyds still owned the debt, it took the £10 off the debt and didn't send what Miss A had asked for. While the DCA did eventually refund this money, she still didn't get the information she wanted. Miss A had to write a number of letters to Lloyds before it eventually sent her some, but not all, of her credit card statements. This took a number of months. And I thought she was entitled to some compensation for all of this.

Lloyds initially said it hadn't sold Miss A PPI

Lloyds said that Miss A didn't have PPI on her credit card. Despite Miss A sending Lloyds copies of the statements showing that it had charged her for PPI between 2008 and 2011, Lloyds wrote back again denying that it had sold her PPI. Lloyds then wrote a third time asking for the product number, even though it had the credit card statements on the file with the card number. Lloyds should've clearly recognised that PPI was on the account and not said it wasn't. I thought Miss A must've found this very frustrating. And I thought she was entitled to some compensation for this.

Lloyds referring the debt to debt collection agencies

I didn't think it was unreasonable for Lloyds to have referred the debt to a DCA. Miss A said that she didn't hear anything from Lloyds between 2004 and 2011. And I thought she was correct. But the reason for this is because the minimum payment was being made on the card each month, presumably by direct debit, from 2004 until August 2010. Although, it's possible it wasn't Miss A who was paying it. During this time the debt remained about the same and there was no reason for Lloyds to contact Miss A.

But there were no payments made on the account after August 2010 so the debt significantly increased. So I didn't think it was unreasonable for Lloyds to instruct a DCA after this point. Its records showed that it was Miss A's credit card and she hadn't made any payments on the account for a number of months.

However, I saw that Miss A had asked Lloyds to stop chasing payment for the debt while the complaint about the mis-sale of PPI was being looked into. But DCAs were still contacting Miss A. I also saw that Miss A received letters from DCAs for a number of months after Lloyds offered to refund the PPI. The total refund of PPI was more than the debt. So Lloyds should've recognised that it would've cleared the balance. And I thought it shouldn't have continued to pursue Miss A for the debt after it had made the offer.

Miss A's credit report

I saw that the non-payment of Miss A's credit card is included in the credit report. Miss A said that she wouldn't have had any adverse entries in respect to her credit card on her credit file, had Lloyds managed her account properly and not mis-sold her PPI.

I thought about what Miss A said. But I thought the reason there was an entry on her credit report was because no payments were made on her credit card for a number of months. Miss A was the account holder, so she was responsible for keeping the payments up to date. I accepted that Miss A didn't appear to know anything about the credit card during that time, as it's possible a third party was making the credit card repayments. But she remained responsible for ensuring the payments were made.

I also accepted that, had Lloyds not sold PPI, she wouldn't have owed as much money. But she would've still owed Lloyds £897.71. Miss A did incur charges for going over her credit limit. And she wouldn't have done so had she not taken out PPI. But Lloyds had offered to refund these charges. And it has included these charges in its offer. Even after Lloyds took off the PPI premiums and credit limit charges, Miss A would've still owed £897.71.

So I thought she would've still defaulted on her account, even if she didn't have PPI. And Lloyds had a duty to record accurate information on her credit file. I didn't think Lloyds caused Miss A to default on her credit card. So I didn't think it was fair to ask it to take the default off her credit file. Although, I thought it should amend the credit file to reflect that the default should've been £897.71, rather than £1,937.01.

I thought Lloyds should pay Miss A compensation for the trouble and upset she has suffered in this matter. Lloyds shouldn't have said that Miss A didn't have PPI on the account. Twice, Miss A referred Lloyds to credit card statements it had sent her showing she had paid for PPI and Lloyds continued to say she didn't take out PPI. It also took far too long to send Miss A the information she had asked for. And it also used the £10 to reduce the debt rather

than send Miss A the information, which was why she sent the £10. Miss A also continued to receive letters from a DCA after it had made her an offer which was more than the debt she owed. Taking all of this into account, and for the reasons set out above, I thought Lloyds should pay Miss A £500 in compensation.

Lloyds accepted my provisional decision. Miss A didn't agree with it for the following reasons:-

1. She's unhappy that I didn't think Lloyds should take the adverse entry off her credit file. She says Lloyds cancelled the direct debit. And this is why she defaulted. She says that an adjudicator from this service previously thought that Lloyds should clear the entry. And she says Lloyds didn't disagree with this because it didn't respond. So she wants Lloyds to ensure that she has a clean credit record.
2. She wants Lloyds to explain how it worked out its offer.
3. Lloyds charged her a late fee of £12 each month between December 2008 and December 2010. But she says she made a payment each month. So she thinks this is unfair. And she wants Lloyds to refund this amount also, plus interest.
4. She doesn't think Lloyds should be allowed to buy back the debt from the DCA. She thinks it's unfair that Lloyds will benefit from this after it chose to sell the debt to a third party for a discounted figure.

my provisional findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account Miss A's comments. I still intend to partially uphold this complaint. And I'd like to explain why.

Lloyds' offer

Miss A wants to see how Lloyds has worked out her offer. And she doesn't think it's fair that it hasn't given her this.

I don't think Lloyds has explained how it worked out Miss A's offer. And I can understand why she is unhappy with this.

Lloyds needed to put Miss A in the position she would've been in if she hadn't taken out PPI. It needed to refund all the premiums she paid and the interest she was charged for PPI on her card. Lloyds then needed to pay 8% simple interest per year for the time she was out of pocket.

Lloyds worked out that it had charged £856.72 in PPI premiums and £501.46 in interest on the PPI premiums. And it's offered to refund this. It's also offering to refund £156 in charges for the time that PPI caused her to go over her credit limit. And it offered £512.16 as 8% simple interest per year for the time she was out of pocket. So I think Lloyds has offered to put Miss A back in the position she would've been in if she hadn't taken out PPI. And I hope that Miss A now understands how Lloyds has worked out the offer.

Miss A doesn't think the compensation takes into account the money it received from selling the debt to the DCA. But while it did sell the debt initially, I understand it's bought the debt back. I don't know what the agreement was between Lloyds and the DCA for how much Lloyds had to pay to buy the debt back. But I don't think this affects this complaint. Miss A owes Lloyds £1,937.01. And Miss A would owe the same amount to the DCA even if Lloyds hadn't bought it back. And part of this debt is for PPI. Lloyds owns this debt, so it's fair for it to use the compensation it owes Miss A for mis-selling PPI to pay off the debt. It should pay any remaining compensation to her directly.

Lloyds has charged for late payments

Miss A has complained that Lloyds charged her a late payment charge of £12 each month from December 2008 to November 2010. Miss A doesn't think that this is fair. She says the accounts show she made the minimum payment each month. And it was always paid on the same date. She thinks that Lloyds must've changed the date the direct debit was taken, which has caused the charges.

Lloyds has explained that the account went into arrears in October 2008. And it says it wasn't able to take any direct debit payments after this date. It said it had the right to use money in Miss A's current account to pay off any arrears on her credit card. This is called the 'right of set off'. It said that, because it wasn't able to take the direct debit any more, the account went into arrears each month. So it used the right of set off to take the minimum payment. But it said it was only able to do so once the account went into arrears. It says that this meant the minimum repayment was late each month. And this is why it charged £12 each month.

I've looked at the bank statements from October 2008 to November 2010. It looks like the direct debit failed in October 2008. So the minimum payment wasn't made that month. And a payment wasn't taken in November 2008. So, given this, I think it was fair for Lloyds to charge a late fee of £12 in October 2008 and November 2008. I can then see that Lloyds started to use the right of set off and took the payment from Miss A's current account. So I don't think its actions were unfair. But it could only use its right of set off when the account went into arrears – i.e. when the minimum payment wasn't made. So this meant the payments were late each month because of the method Lloyds had to use to make the repayment.

I've thought about Lloyds' actions in using the "right of set off". I don't think the "right of set off" is intended to allow a bank to regularly move a consumer's money from one account to another on a monthly basis. We usually say it's fair for a bank to use its "right of set off" as a one-off when a consumer owes a bank a debt but has other funds in a different account. But using the right of set off on a regular monthly basis for two years isn't something I'd usually think is fair or reasonable. *But in this particular case* I can see Lloyds tried many times to contact Miss A. And if it hadn't used the "right of set off" then it's likely the arrears on Miss A's account would've been even greater. So in this case I think it was fair for Lloyds to use the "right of set off" in this way.

The credit card account was in Miss A's name. So it was Miss A's responsibility to ensure the repayments were kept up to date. I can see that Lloyds made a large number of attempts to contact Miss A, both in writing and telephone, between January 2009 and November 2010. And it appears that Lloyds left her many messages asking her to contact it to discuss the account. I accept that Lloyds probably had wrong contact details for Miss A. But it was

also her responsibility to ensure that Lloyds did have the correct details. And she should've made sure Lloyds had the new details when she moved house.

Ultimately, the account did go into arrears each month. And, as I said, it was Miss A's responsibility to keep up with the repayments. And she didn't do so. I think Lloyds tried to contact Miss A to resolve the situation but it didn't hear back from her. I accept that the credit card terms and conditions allow a fee to be charged for a late payment. And I accept that Lloyds couldn't use the "right of set off" until the monthly payment date had passed each month. But it also seems to me that it wasn't reasonable for Lloyds to continue to charge Miss A a late fee every month for 22 months when it must've been clear something was wrong. In this case it appears Miss A had moved house and not told Lloyds her new contact details.

So on one hand I think Miss A was at fault for not updating Lloyds with her new details. But on the other hand I don't think it's fair for Lloyds to charge Miss A a late fee every month for 22 months when it was using its "right of set off".

So in my view Lloyds should refund half of the late fees it charged Miss A between December 2008 and December 2010 and any interest charged on those fees.

Miss A's credit file

Miss A has pointed out that an adjudicator from this service previously said that Lloyds should remove the default entirely from her record. I've thought about this but my role is to look at the whole complaint afresh and decide what's fair.

Miss A says that Lloyds stopped taking payments in August 2010. She says it uses a direct debit system and it takes the payments. So it must've been its decision to stop doing so. She says neither she, nor anyone else, stopped the payments being taken. So she says she was made to default due to no fault of her own. And she says she didn't think it was unreasonable to assume that the account was clear because the payments had stopped. She thinks it's Lloyds' fault that she had an adverse entry on her credit file.

I agree with Miss A that it seems that Lloyds did stop taking payments from her. But from October 2008 onwards it wasn't using the direct debit system to take the payments. The direct debit payments stopped in October 2008 and after this Lloyds' used its 'right of set off' to take the payments from Miss A's account.

It had unsuccessfully tried to contact Miss A a large number of times over a two year period. But it never received a response. I can see that Lloyds tried to call Miss A over 40 times in November 2010 and left a large number of messages. It had also tried to contact her throughout August and October 2010. Given that Miss A didn't respond, it issued a default notice and referred the debt to the DCA. I don't think it was unreasonable.

So I still think Lloyds had a duty to record accurate information on her credit file. And this meant recording the default on the credit card. So I don't think it's fair to ask it to take the default off her credit file. Although, I still think it should amend the credit file to reflect that the default should've been £897.71, rather than £1,937.01.

trouble and upset

Miss A doesn't think £500 in compensation is enough, given all the trouble and upset she's suffered as a result of this matter. She thinks it's a fair amount for the additional stress

Lloyds has caused by misleading her. But she doesn't think it takes into account the stress she's suffered and phone calls and paperwork she's had to send because of the complaint. She also doesn't think that it will stop Lloyds from acting in the same way again.

I've taken into account Miss A's comments. But I still think £500 is fair. It's inevitable that Miss A would've incurred some inconvenience from having to make a complaint, as anyone would when complaining. The issue for me to decide is whether she's suffered more than one would ordinarily expect to incur when making a complaint. I think she has, which is why I said I intended to award £500.

Lloyds did cause Miss A a large amount of trouble and upset before she brought the complaint to this Service. Lloyds shouldn't have said that Miss A didn't have PPI on the account. Twice, Miss A referred Lloyds to credit card statements it had sent her showing she had paid for PPI and Lloyds continued to say she didn't take out PPI. It also took far too long to send Miss A the information she had asked for. And it also used the £10 to reduce the debt rather than send Miss A the information, which was why she sent the £10. Miss A also continued to receive letters from a DCA after it had made her an offer which was more than the debt she owed.

I accept that she's had to have telephone calls with this Service and send in paperwork. But I don't think that this has caused any more trouble and upset that one would expect when making a complaint.

I note she doesn't think £500 would stop Lloyds from acting in the same way again. But this Service doesn't fine and punish businesses. Taking all of this into account, I still think Lloyds should pay Miss A £500 in compensation.

what Lloyds needs to do to put things right

5. The way that Lloyds has calculated the refund of PPI is fair, subject to any update of the 8% simple interest to the final settlement date. It can use this money to pay off the outstanding balance. But it should pay any money left over directly to Miss A;
6. Lloyds should update Miss A's credit file to say that the default was £897.71 rather than £1,937.01; and
7. It should pay Miss A £500 compensation for the trouble and upset she's suffered in this matter.
8. Refund half of the late fees it charged Miss A between December 2008 and December 2010 and any interest charged on those fees.

my provisional decision

For the reasons I've set out above, I intend to partially uphold Miss A's complaint.

I also intend to say that Lloyds Bank PLC should pay Miss A compensation in line with the instructions set out above.

Guy Mitchell
ombudsman